

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SHAWN L. SPEAR,

Petitioner,

v.

CIVIL ACTION NO. 5:04CV65

JO ANNE B. BARNHART,
COMMISSIONER of SOCIAL
SECURITY ADMINISTRATION,

Defendant.

MEMORANDUM, OPINION and REPORT AND RECOMMENDATION
THAT CASE BE DISMISSED FOR FAILURE TO COMPLY WITH
TIMELINESS REQUIREMENTS OF LOCAL RULES

On June 15, 2004 Plaintiff, Shawn L. Spear filed an action seeking judicial review of an adverse decision by the defendant, Commissioner of Social Security, pursuant to 42 U.S.C. § 405 (g). On September 1, 2004 Defendant filed an answer and transcript. L.R. Gen. P. 83.12 (b) requires Claimant to file a Brief in Support of his or her claim(s) for relief within thirty (30) days of Commissioner's filing her answer and a complete copy of the administrative record. Accordingly, Claimant's brief was due on October 1, 2004.

On February 18, 2005 the court advised the *pro se* plaintiff of his right to file responsive material and alerted him to the fact that his failure to so respond might result in the entry of an order of dismissal against him in accordance with Roseboro v. Garrison, 528 F.2d 309, 310 (4th Cir. 1975). Plaintiff was ordered to file any opposition explaining why his case should not be dismissed by April 21, 2005. As of April 26, 2005 this Court has not received any opposition papers from Plaintiff. Therefore, I Recommend that this case be **DISMISSED** for failure to comply with timeliness requirements of Local Rules.

Any party who appears *pro se* and any counsel of record, as applicable, may, within ten (10) days after being served with a copy of this Report and Recommendation, file with the Clerk of the Court written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. A copy of such objections should be filed with the District Court Judge of Record. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to parties who appear *pro se* and any counsel of record, as applicable.

DATED: April 27, 2005

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE